

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Holly
PL-III

FILE:

B-220057

DATE: September 18, 1985

MATTER OF:

National Minority Research Development
Corporation

DIGEST:

Proposal hand-delivered after time specified for receipt must be rejected as late, even though the cause of the delay, an automobile accident, was beyond the offeror's control.

National Minority Research Development Corporation protests the rejection of its proposal in response to solicitation No. NIH-TW-85-15, issued July 12, 1985 by the Department of Health and Human Services' National Institutes of Health (NIH), Bethesda, Maryland. The protester asks that the late proposal be considered because National's president was involved in an automobile accident while attempting to deliver it.

We dismiss the protest.

According to National, its proposal was being hand-carried by the company's president on August 30, 1985. While proceeding to the location designated for receipt, the car in which the president was a passenger experienced a malfunction of the wheel rods that caused the driver to lose control of the car and run into an embankment adjoining the highway. The president states that he departed the scene of the accident and telephoned the contracting officer, who advised him to get to the agency as soon as possible. After an unsuccessful attempt to catch a cab, the president finally was able to flag down a motorist who drove him to NIH. However, he arrived after the designated time for receipt of proposals.

Bidders and offerors are responsible for the timely delivery of their bids or proposals, and late delivery generally requires rejection. See the Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 14.304-1 and 15.412 (1984). A proposal that is hand-carried by an offeror and arrives late can only be considered if the paramount cause of delay

033206

52259

is wrongful government action and if consideration of the proposal would not compromise the integrity of the competitive procurement system. "Wrongful government action," in this context, means affirmative action on the government's part, such as improper or conflicting delivery instructions, that made it impossible for the hand-carried proposal to be timely delivered. See T.E. Deloss Equipment Rentals, B-214029, July 10, 1984, 84-2 CPD ¶ 35. There is no evidence here of any government impropriety that would fall within this exception.

We recognize that the accident in this case was beyond the protester's control. Nevertheless, the FAR clause that permits consideration of late submissions applies to only those sent by mail (or telegram if authorized) unless the proposal is the only one received. 48 C.F.R. § 52.215-10. We have held that where an offeror chooses to hand-carry a proposal rather than use a method of delivery specified in the late proposal clause, and a delay in delivery does occur, the proposal is not for consideration even if the delay resulted from unanticipated causes. For example, we have held this clause provided no basis to consider a late proposal where the messenger carrying it was delayed by a snowstorm. O.N.D. Production, Inc., B-194312, Apr. 13, 1979, 79-1 CPD ¶ 267. Similarly, we upheld the rejection of a hand-carried proposal that was received 5 minutes after the time set for receipt of proposals where the lateness was due to unexpected traffic delays. Briggs Engineering and Testing Co., Inc., B-192943, Oct. 3, 1978, 78-2 CPD ¶ 256. The result was the same even when the traffic delay was caused by roadblocks set up to divert traffic from an area subject to sniper fire. Data Pathing, Inc., B-188234, May 5, 1977, 77-1 CPD ¶ 311.

While application of the rule in this case, as in the cited cases, may seem harsh, we believe it is required by the need to treat all offerors fairly and equally and to maintain the integrity of the competitive system. See Phelps-Stokes Fund, B-194347, May 21, 1979, 79-1 CPD ¶ 366. Accordingly, we find no basis to excuse the lateness of National's proposal, which NIH properly rejected.

The protest is dismissed.

Ronald Berger

Ronald Berger
Deputy Associate
General Counsel